

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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JOHN J. VRABEL and KIMBERLY VRABEL,

Plaintiffs-Appellants,

v

ARTHUR CHUBB and BONITA CHUBB,

Defendants-Appellees.

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UNPUBLISHED

January 29, 1999

No. 201915

Wayne Circuit Court

LC No. 96-624496 NO

Before: Sawyer, P.J., and Bandstra and R. B. Burns\*, JJ.

PER CURIAM.

Plaintiffs appeal as of right an order granting summary disposition in favor of defendants pursuant to MCR 2.116(C)(10). We reverse.

John was at defendants' house assisting with the reshingling of defendants' roof, at the request of a third party, when he walked near the edge of the roof, stepped onto some shingles that were extending off the roof into the air, and fell to the ground sustaining injuries. John's wife, Kimberly, also suffered a loss of consortium and other damages. Plaintiffs filed a premises liability action against defendants, which was summarily dismissed by the trial court pursuant to the volunteer doctrine.

Plaintiffs' first issue on appeal is that the trial court erred in failing to consider and find that John was an invitee while on defendants' property, working on defendants' roof. We agree.

Plaintiffs argue that John was an invitee of defendants and, thus, defendants owed John a duty to exercise reasonable care to protect him from unreasonable risks of harm caused by dangerous conditions on their land that defendants knew or should have known John would not discover, realize, or protect himself against. Defendants argue that John was a mere volunteer and, thus, defendants were not liable for John's injuries because his injuries were not proximately caused by willful and wanton misconduct.

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\* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

Whether a defendant owes a duty to a plaintiff in a particular circumstance is a question of law for the court to decide. *Hughes v PMG Bldg*, 227 Mich App 1, 5; 574 NW2d 691 (1997). A landowner's duty to a visitor who is on the landowner's property depends on the visitor's legal status. *Hottmann v Hottmann*, 226 Mich App 171, 175; 572 NW2d 259 (1997). There are three traditional categories of legal status—invitee, licensee, or trespasser. *Stanley v Town Square Coop*, 203 Mich App 143, 146-147; 512 NW2d 51 (1993). If there is no factual dispute as to the purpose for which the visitor was on the premises, the legal status of the visitor is a question of law. *Stitt v Holland Abundant Life Fellowship*, 229 Mich App 504, 505-506; 582 NW2d 849 (1998). If there is a factual dispute, the visitor's status is a question of fact. *Id.*

In the present case, the following facts do not appear to be disputed: (1) Mark Gilliam entered into a business arrangement with defendants to perform work on defendants' house, (2) defendants did not prohibit Gilliam from seeking help to accomplish the work on defendants' house, (3) Gilliam requested John's assistance in the accomplishment of the work being done for defendants, (4) John did not expect to be paid by defendants, (5) John was on the roof of defendants' house assisting in the reshingling of the roof when he fell, and (6) the reshingling of defendants' roof was beneficial to defendants. Since there is no factual dispute as to the purpose for which John was on defendants' premises, John's status as an invitee or licensee is a question of law. *Stitt, supra*, 229 Mich App 505-506. Since John was on defendants' premises, with an expressed or implied invitation, for the purpose of performing services beneficial to defendants, John was an invitee. *Ryder Truck Rental v Urbane*, 228 Mich App 519, 524; 579 NW2d 425 (1998).

Defendants' argument that John's legal status while on defendants' premises was that of a mere volunteer must fail. The volunteer doctrine has recently been confirmed as a limitation on respondeat superior liability only, in conformity with the holding of *Diefenbach v The Great Atlantic & Pacific Tea Company*, 280 Mich 507, 512; 273 NW 783 (1937). *Ryder Truck Rental, supra*, 228 Mich App 523, 524-525. The *Ryder Truck Rental* Court further held that a volunteer may also be a licensee, who may also be an invitee, for purposes of premises liability, if the volunteer performed any act or service of benefit to the invitor. *Id.*, p 525. Consequently, although John may have been a volunteer, the volunteer doctrine is not applicable because this is a premises liability action, and not a respondeat superior claim against defendants.

Plaintiffs' second issue on appeal is that the trial court erred in dismissing plaintiffs' claim pursuant to the volunteer doctrine. We agree for the reasons stated *supra*.

Plaintiffs' third issue on appeal is that the trial court erred in finding that the volunteer doctrine is viable law in Michigan. We disagree. The volunteer doctrine is viable law in Michigan, but its application is as a limitation on respondeat superior liability only.

Reversed.

/s/ David H. Sawyer  
/s/ Richard A. Bandstra  
/s/ Robert B. Burns

